

each MSA¹⁶² that allows them to be successful in the enterprise market. Thus they are now investing in marketing efforts to serve this market.¹⁶³

2. Wireline CLECs and Competitive Fiber

Qwest showed that CLECs competing through QPP/QLSP and Resale are providing significant numbers of business lines in each MSA.¹⁶⁴ Moreover, in Denver the number of VGE circuits provided by competitors using Qwest Special Access services exceeds the number of circuits being provided by CLECs using UNEs, QPP/QLSP and Resale combined.¹⁶⁵

Competition that relies on these wholesale inputs supports the conclusion that Section 251(c)(3) unbundling is no longer necessary to meet the standards of Section 10(a)(1).¹⁶⁶ If the Commission grants Qwest's forbearance, then competitors could still provide service through special access, QPP/QLSP and Resale as well as via competitor-owned facilities.

petition at 9 and Minneapolis Brigham/Teitzel Declaration ¶ 18; Phoenix forbearance petition at 8-9 and Phoenix Brigham/Teitzel Declaration ¶ 17.

¹⁶² Denver forbearance petition at 8-9 and Denver Brigham/Teitzel Declaration ¶ 18; Seattle forbearance petition at 9 and Seattle Brigham/Teitzel Declaration ¶ 18; Minneapolis forbearance petition at 9 and Minneapolis Brigham/Teitzel Declaration ¶ 18; Phoenix forbearance petition at 8-9 and Phoenix Brigham/Teitzel Declaration ¶ 17.

¹⁶³ Denver forbearance petition at 22 and Denver Brigham/Teitzel Declaration ¶ 18; Seattle forbearance petition at 21-22 and Seattle Brigham/Teitzel Declaration ¶ 18; Minneapolis forbearance petition at 22-23 and Minneapolis Brigham/Teitzel Declaration ¶ 18; Phoenix forbearance petition at 21-22 and Phoenix Brigham/Teitzel Declaration ¶ 17.

¹⁶⁴ Denver forbearance petition at 22-23; Seattle forbearance petition at 22-24; Minneapolis forbearance petition at 23-25; Phoenix forbearance petition at 23-25.

¹⁶⁵ Denver forbearance petition at 24 and Denver Brigham/Teitzel Declaration ¶ 32.

¹⁶⁶ *Omaha Forbearance Order*, 20 FCC Rcd at 19449-50 ¶ 68.

Qwest has shown that there is extensive competitive fiber in each MSA.¹⁶⁷ The presence of competitive fiber in these four MSAs means that wholesale and retail customers (and in particular, enterprise business customers located along fiber routes) have another means (in addition to intermodal and intramodal network alternatives such as coaxial networks, traditional copper facilities bypass, fixed wireless networks, etc.) of bypassing Qwest's loop and transport network within the four MSAs.

Various commenters in this proceeding contend that the competitive fiber telecommunications information presented in the four Brigham/Teitzel declarations is insufficiently granular to shed any light on the local exchange competitive environment and should be disregarded by the Commission in its analysis of Qwest's four forbearance petitions.¹⁶⁸ These claims are flatly incorrect, for the following reasons. First, Confidential Exhibit 4 to each petition clearly shows the scope of competitive, non-Qwest¹⁶⁹ fiber optic network facilities in each MSA (it should also be noted that these maps reflect only competitive fiber optic facilities, and exclude any competitive network facilities provided via other intramodal and intermodal facilities). Next, the commenters assert that Qwest provided no information regarding fiber provided by individual competitors in each MSA. This is inaccurate. Indeed, the Brigham/Teitzel declarations provided specific information obtained from GeoTel regarding

¹⁶⁷ Denver forbearance petition at 26-27 and Denver Brigham/Teitzel Declaration ¶¶ 34, 35; Seattle forbearance petition at 26 and Seattle Brigham/Teitzel Declaration ¶¶ 37-38; Minneapolis forbearance petition at 26-27 and Minneapolis Brigham/Teitzel Declaration ¶¶ 37-38; Phoenix forbearance petition at 26-27 and Phoenix Brigham/Teitzel Declaration ¶¶ 34-35.

¹⁶⁸ Covad at 8, 39-41, 52, 52; Time Warner at 7, 11, 27, 28; ACC at 16, 19; Affinity at 10, 39, 41, 53, 56; Ad Hoc at 7, 8; Cox at 15, 16.

¹⁶⁹ Since OnFiber was purchased by Qwest, any OnFiber network facilities identified by GeoTel in these MSAs was removed from the competitive fiber maps to ensure the fiber deployment shown reflects only fiber facilities owned by non-Qwest entities.

telecommunications fiber owned and operated by individual competitors for retail and wholesale purposes in each of the four MSAs.¹⁷⁰ It is important to note that these competitive fiber deployments were not installed to comport with particular geographic Qwest wire center boundaries, but rather, were deployed to deliver service in locations in the four MSAs that the fiber-based carriers perceived to represent the most promising business opportunities. Typically, competitors initially target customers that represent the most attractive margins and are efficient to serve, and then expand the scope of their operations to target customers who may represent marginally lesser profit potential as the competitors gain scale and scope.

Several commenters claim that Qwest did not provide information regarding the number of buildings in each MSA currently served by competitive fiber, or that Qwest's information is inaccurate. This is false.¹⁷¹ In fact, the Brigham/Teitzel declarations report the number of buildings in each of the four MSAs reported in the GeoTel research to be served by competitive fiber.¹⁷² It must be emphasized that the level of competitive fiber in the market is not static and is continually growing. For example, in announcing on August 7, 2007 its "strong second quarter 2007 results," Time Warner Telecom (one of the commenters in this docket) reported that the

¹⁷⁰ See Denver Brigham/Teitzel Declaration ¶¶ 21, 27, 31, 49 and 50; Minneapolis Brigham/Teitzel Declaration ¶¶ 23, 25, 29, 30, 31, 35, 51, 54, 55 and 56; Phoenix Brigham/Teitzel Declaration ¶¶ 17, 19, 21, 23, 26, 27, 41 and 42; Seattle Brigham/Teitzel Declaration ¶¶ 22, 24, 26, 28, 30, 33, 51 and 52.

¹⁷¹ In fact, the "Affinity" commenters strain credulity by providing a discussion at page 53 of their comments regarding a "survey" done by Integra technicians, in which these technicians reported their on-site observations of buildings served by competitive "lit fiber" as they visited buildings to conduct normal installation/repair activities. However, Affinity admits its "survey" encompassed "only 1% of all buildings in which Integra has customers" in the Minneapolis, Phoenix and Seattle MSAs. See Affinity at 53. Affinity's ill-supported "survey" should be flatly dismissed.

¹⁷² See Denver Brigham/Teitzel Declaration ¶ 8; Minneapolis Brigham/Teitzel Declaration ¶ 8; Minneapolis Brigham/Teitzel Declaration ¶ 9; Seattle Brigham/Teitzel Declaration ¶ 8.

number of metro fiber route miles it owns increased from 13,913 in March 31, 2006 to 18,324 in June 2007, an increase of 32%. It also reported that the number of buildings it serves via Time Warner fiber optic telecommunications facilities increased from 23,050 in March 2006 to 28,105 in June 2007, an increase of 22% in just over one year.¹⁷³ While Time Warner's earnings report relates to its operations in the U.S. and is not specific to the four MSAs at issue in this docket (since such specific data is extremely sensitive and is known only to Time Warner), this public information is a clear indication of the continuing growth trend in competitive fiber optic telecommunications facilities in the market.

Various commenters in this proceeding contend that the U.S. Government Accountability Office's ("GAO") report of November 2006 to the House of Representatives regarding competition in the U.S. dedicated access market ("GAO Report") represents evidence that GeoTel's competitive fiber information is incorrect. They argue that the GAO report shows there is not enough competitive fiber to constrain prices to enterprise customers.¹⁷⁴ However, a quick review of the GAO Report demonstrates the following weaknesses:

1. In the GAO report summary, the GAO noted the following:

FCC has also noted that, where competitors can lease unbundled network elements from the incumbent providers, there may be less incentive for competitors to invest in their own facilities.

In other words, the Commission's opinion is that the GAO findings do not account for the fact that the availability of TELRIC-priced UNEs has a direct influence on whether CLECs choose to invest in deploying their own network facilities -- and making significant network

¹⁷³ *Time Warner Telecom Reports Strong Second Quarter 2007 Results*, p. 13, August 7, 2007.

¹⁷⁴ COMPTTEL at 40, 41; BT Americas at 2, 5, 6; EarthLink at 33; Time Warner at 14; ACC at 21; Affinity at 54, 81; Washington at 11.

investments may be a business model with far less appealing financials, at least in the short term. The GAO itself concludes, "competitive firms may have an incentive to continue to lease UNEs as opposed to incurring the costs of extending their own networks."¹⁷⁵

1. The GAO report did not compare and contrast dedicated access prices of non-RBOC entities and RBOCs in assessing whether RBOC Special Access prices are "reasonable."

We also were unable to collect data on prices that competitors charged; therefore, those prices are excluded from this analysis. According to competitors, they could not provide data on prices because of nondisclosure agreements they have in place... Furthermore, we were unable to measure the extent to which price trends related to cost trends, because these data were also unavailable.¹⁷⁶

2. At page 21 of its report, the GAO states:

In addition, the results from table 2 may also *understate* facilities-based competition to some extent. Both incumbent and competitive firms voluntarily populate their network locations and functions into the database for the purposes of interconnection and network management. According to Telcordia, data on competitive firms may be less comprehensive than data on incumbent firms, but a precise estimate of underreporting is not available from Telcordia.

In other words, to the extent that firms do not accurately report -- or do not report at all -- the building locations they serve, the GAO report is simply as accurate -- or as inaccurate -- as the data which is reported.

3. At page 22 of its report, the GAO offers data regarding the proportion of buildings in various MSAs with a fiber-based competitor present. This data, however, suffers from the limitations described above. In addition, this data only

¹⁷⁵ GAO Report at 26.

¹⁷⁶ *Id.* at 11-12.

reflects reported locations served by fiber optic cable, and excludes locations served via other means.

In sum, should the Commission grant Qwest's forbearance petition requests, competitors that now rely upon UNEs could rely upon QPP/QLSP, resale, Qwest's Special Access, or competitive fiber, or they could build their own facilities. As McLeod's president has stated "it's easy enough" to get fiber into a building. So, even if a building is not lit now, it could easily be lit in the future.

3. Wireless, System Integrators, IP-Enabled Service Providers and Other Competitors

Qwest has shown that wireless, IP-enabled service providers, and system integrators are making competitive inroads into the enterprise market.¹⁷⁵ The Commission should consider such intermodal competition in the enterprise market as it evaluates Qwest's forbearance petitions.

Some parties claim that Qwest has failed to prove that there is wireless competition in the small business and enterprise markets.¹⁷⁶ However, large business customers are increasingly utilizing wireless and wireless broadband alternatives, as carriers move to provide higher speed wireless services, such as WiMax. For example, Sprint Nextel and Clearwire, a wireless-broadband company, announced that it would offer WiMax service in Denver in 2008.

According to the Denver Post:

WiMax is billed as a ubiquitous wireless-broadband technology that offers faster download speeds than traditional wireless fidelity, or WiFi, networks. One WiMax base station can cover a small city or a radius of several miles, whereas a WiFi hotspot covers a coffee shop or about 100 yards.¹⁷⁶

¹⁷⁵ Denver forbearance petition at 25-26 and Denver Brigham/Teitzel Declaration ¶¶ 47, 48, 58 and 59.

¹⁷⁶ Covad at 36.

¹⁷⁶ *WiMax coming to Denver in '08*, Denver Post, August 8, 2007, *see*: http://www.denverpost.com/business/ci_6568140 (visited September 28, 2007).

Affinity argues that wireless service should not be counted as an intermodal competitor because "major wireless carriers remain heavily dependent on ILEC special access and transport services."¹⁸⁰ Especially since wireless carriers may not use UNEs instead of special access, a wireless carrier's use of Qwest's special access services is immaterial to whether the Commission should forbear from requiring Qwest to provide UNEs. Qwest must offer Special Access services pursuant to tariffing or contract filing requirements. As the Commission explained in the *Omaha Forbearance Order*, Qwest cannot cease offering such services without authority under Section 214.¹⁸¹ Moreover, as demonstrated in Qwest's comments in the Special Access docket, wireless carriers are not dependent on Qwest for backhaul, and in fact there are alternative services available for wireless backhaul.¹⁸²

Other CLECs argue that the Commission should ignore VoIP-based competition in the business market. It is interesting that the CLECs that argue that the Commission should ignore VoIP-based competition¹⁸³ are the same CLECs that are aggressively marketing VoIP-based services to business customers. For example, XO markets its "XOptions Flex" suite of VoIP-based services to business customers. According to XO, "Business Communications is evolving, and XO Communications is leading the way with the next generation of IP bundled services -- XOptions® Flex. It's one simple bundle containing a complete package of communications

¹⁸⁰ Affinity at 23.

¹⁸¹ *Omaha Forbearance Order*, 20 FCC Rcd at 19455 ¶ 80.

¹⁸² See Comments of Qwest Communications International Inc., WC Docket No. 05-25 and RM-10593, filed Aug. 8, 2007, at 29-35, 39-44; Reply Comments of Qwest Communications International Inc., WC Docket No. 05-25 and RM-10593, filed Aug. 15, 2007, at 30-31, 42-45, 48-50.

¹⁸³ Covad at 37-39.

solutions for your business.”¹⁸⁴ XO touts on its web site that “it has been recognized by the indirect channel partner community as the best provider of voice over IP (services).”¹⁸⁵ Eschelon now offers VoIP-based services to businesses in Minneapolis, and plans to offer VoIP-based services in Phoenix and Denver by the end of the third quarter. Eschelon states: “By offering both VoIP and TDM-based solutions, we’ll be able to help the customer choose the best solution for their business communication needs -- that is key to our product strategy.”¹⁸⁶ McLeod, which has just announced it will be acquired by PAETEC, provides VoIP-based services to businesses via its Dynamic Integrated Access (“DyIA”) in each of the four MSAs.¹⁸⁷ The fact is, nearly all of the CLFCs that claim in their comments that VoIP-based services are not a substitute for wireline services are aggressively marketing VoIP-based services today as a substitute for traditional wireline services.

III. THE REQUESTED FORBEARANCE IS IN THE PUBLIC INTEREST

The extensive competition for both mass-market and enterprise customers in each of the four MSAs satisfies not only the first two parts of the forbearance test, but also supports a finding that eliminating the regulations in question is in the public interest.¹⁸⁸ Moreover, as Qwest demonstrated in its forbearance petitions, forbearance is also in the public interest because

¹⁸⁴ See: <http://www.xo.com/products/smallgrowing/integrated/flex/index.html> (visited September 28, 2007).

¹⁸⁵ See: <http://www.xo.com/news/333.html> (visited September 28, 2007).

¹⁸⁶ See: http://www.eschelon.com/about_us/section_detail.aspx?itemID=9215&catID=8599 (visited September 28, 2007).

¹⁸⁷ See: http://www.mcleodusa.com/ProductDetail.do?com.mcleodusa.req.PRODUCT_ID=241505 (visited September 28, 2007).

¹⁸⁸ *Omaha Forbearance Order*, 20 FCC Rcd at 19437 ¶ 47, 19453 ¶ 75.

the costs of the unbundling obligations and dominant carrier regulation of interstate access services outweigh the benefits of such regulation.¹⁸⁹

Several commenters argue that forbearance from unbundling regulation would impede investment. Both the Commission and the courts have repeatedly found that the opposite is true. In fact, continued unbundling is likely to impede investment, especially in geographic areas -- such as the four MSAs at issue in this docket -- where telecommunications competition is entrenched.¹⁹⁰

Several commenters complain that forbearance will not enhance competition. But, as the Commission found in the *Omaha Forbearance Order*, eliminating the regulations at issue will enhance competition by removing rules that limit Qwest's ability to respond to competitive forces, and therefore, its ability to quickly offer consumers new pricing plans or service packages. In addition, removing dominant carrier regulation will increase regulatory parity between Qwest and its rivals. The Commission has recognized increased regulatory parity as pro-competitive.¹⁹¹

Forbearance from the *Computer III* requirements is also justified. These requirements were imposed to prevent the Bell Companies from using their control over the local exchange network and the provision of basic services to engage in anti-competitive behavior against enhanced service providers, *i.e.*, information service providers, which must obtain basic network services from the Bell companies in order to provide their information service offerings. The traditional reason for the *Computer Inquiry* rules was that the telephone was the primary, if not

¹⁸⁹ Denver forbearance petition at 28; Seattle forbearance petition at 27-28; Minneapolis forbearance petition at 28-29; Phoenix forbearance petition at 28-29.

¹⁹⁰ *USTA II*, 359 F.3d at 580-84.

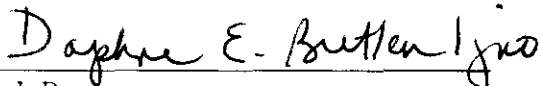
¹⁹¹ *Omaha Forbearance Order*, 20 FCC Rcd at 19438 ¶ 49.

exclusive, means through which information service providers can gain access to their customers.¹⁹² As described above, this is no longer the case today as we have left the “one wire” world and there are now multiple competitive options in each of the four MSAs. Forbearance from the *Computer III* regime is therefore in the public interest.

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¹⁹² See *NCTA v. Brand X*, 545 U.S. 967, 1001 (2005).

CERTIFICATE OF SERVICE

I, Joan O'Donnell, do hereby certify that I have caused the foregoing **REPLY** **COMMENTS OF QWEST** to be: 1) filed (Public Version - *original and four copies*; Confidential Version -- *original and one copy*) with the Office of the Secretary of the FCC in WC Docket No. 07-97; 2) *two copies* (Public Version and Confidential Version) served via courier on Ms. Janice M. Myles at the address indicated below; 3) one copy (Public Version only) served via courier on the FCC's duplicating contractor Best Copy and Printing, Inc. at the address indicated below; and 4) one copy (Public Version) served via First Class United States Mail, postage prepaid, on the parties listed on the attached service list.

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